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OCT 13 1994

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Equal Access and Interconnection
Obligations Pertaining to
Commercial Mobile Radio Services

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CC Docket No. 94-54
RM-8012

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Nearly all of the commenters in this proceeding oppose the imposition of mandated equal access obligations on providers of Commercial Mobile Radio Services ("CMRS"). There is no monopoly on wireless access to interexchange services comparable to the local exchange carrier bottleneck in the wireline industry. Imposing costly and cumbersome equal access obligations on a CMRS industry that already has the capability to provide access to all interexchange services is not in the public interest. In addition, wireless subscriber access to competing interexchange carriers will be even greater in the future as new CMRS providers enter the market. Thus, even interim equal access obligations would be unnecessary, economically inefficient and a waste of resources.

Interconnection of all CMRS services to the public switched network through local exchange carriers is essential to the evolution of a competitive wireless marketplace. Whether interconnection is obtained under a tariff or through negotiated agreement, the Commission must enforce the statutory requirement that all CMRS providers be able to reasonably obtain interconnection on non-discriminatory rates, terms and conditions. The Commission should require all interconnection agreements to reflect the principle of "mutual compensation" so that CMRS carriers receive compensation for terminating landline-originated calls.

The comments affirm that mandated CMRS-to-CMRS interconnection is both unnecessary and premature at this time. Mandating CMRS-to-CMRS interconnection would hinder technological development without any demonstrated need for such standards. Similarly, mandated resale obligations are not warranted given the number and diversity of CMRS carriers and the likelihood that competition will more effectively develop without such requirements.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (the "Commission"), Nextel Communications, Inc. ("Nextel") files these Reply Comments in the above-captioned proceeding. Nextel filed Comments in this proceeding on September 12, 1994.

Of the approximately 60 commenters, nearly all opposed imposing equal access obligations on the wireless industry. They agree there is no monopoly on wireless access to interexchange services comparable to that which exists in the wireline industry and therefore no basis for mandated equal access obligations comparable to those imposed upon the Bell Operating Companies upon the breakup of the Bell System. The commenters also overwhelmingly opposed mandated interconnection among Commercial Mobile Radio Service ("CMRS") providers, while they were split on the necessity of CMRS resale obligations and the appropriate procedure for

establishing interconnection agreements between local exchange carriers ("LECs") and CMRS providers.

Upon review of the comments, there is no economic, historical or regulatory justification for imposing equal access on CMRS providers. Although the CMRS industry is not yet competitive, in that incumbent cellular carriers enjoy market power, the increasing number of prospective competitors assures that there will be no bottleneck access to interexchange services requiring mandated equal access. Nextel reaffirms its opposition to mandated resale and CMRS-to-CMRS interconnection obligations -- mandates which are unnecessary and unjustified by the current and future state of the CMRS marketplace.

II. EQUAL ACCESS

A. The Majority Of Commenters Agree That Equal Access Obligations Are Not Justified In The Wireless Communications Market

The imposition of equal access obligations on all CMRS providers is not necessitated by the current or future state of the CMRS market.^{1/} In the wireline market, in which equal access obligations were initially imposed, the local exchange carrier is the only avenue for telephone customers to reach long-distance

^{1/} See Comments of Alltel Mobile Communications, Inc. ("Alltel") at p. 2; Comments of the American Mobile Telecommunications Association ("AMTA") at p. 5; Comments of Americell PA-3 Limited Partnership ("Americell") at p. 2; Comments of Dakota Cellular, Inc. at p. 1 ("Dakota Cellular"); Comments of GTE Service Corp. at p. 2, 19; Comments of National Association of Business and Educational Radio ("NABER") at p. 6; Comments of SNET Mobility, Inc. ("SNET") at p. 5; Comments of Southwestern Bell Corporation ("Southwestern Bell") at pp. 20-24; Comments of Triad Cellular ("Triad") at p. 3.

carriers. Unlike the wireline market, however, the wireless market presents numerous options for consumers.^{2/} In addition to the two cellular providers, Specialized Mobile Radio ("SMR") providers, wide-area SMR providers ("ESMRs") and Personal Communications Services ("PCS") will give wireless customers multiple options to reach long-distance companies. It is this choice of similar CMRS services through multiple service providers that negates the need for equal access.

Imposing equal access obligations on a CMRS industry that already has the capability to provide access to all interexchange carriers ("IXCs") is not in the public interest.^{3/} The costs imposed on carriers to implement the unnecessary operational changes far outweigh the minimal benefits of mandated equal access.^{4/} As Airtouch Communications, Inc. ("Airtouch") explained in its Comments, equal access conversion will result in numerous costs, i.e., among others, marketing costs, software changes to the switch, access interconnection through the LEC, new

^{2/} See Comments of Ameritech at p. 4; Comments of BellSouth Corporation ("BellSouth") at p. 11.

^{3/} Moreover, existing "dial-around" capabilities assure that wireless subscribers can reach their IXC of choice without the costs and burdens of mandated equal access.

^{4/} See Comments of Alltel at pp. 5-6; Comments of Century Cellnet, Inc. ("Century Cellnet") at p. 7; Comments of Comcast Corporation ("Comcast") at p. 33; Comments of GTE at p. 15; Comments of OneComm Corporation ("OneComm") at p. 14; Comments of National Telephone Cooperative Association ("NTCA") at p. 4; Comments of RAM Mobile Data USA Limited Partnership ("RAM") at p. 3; Comments of Rural Cellular Association ("RCA") at p. 6; Comments of Small Market Cellular Operators ("Small Operators") at p. 2.

billing arrangements, modifications to customer order information, customer service training, and balloting.^{5/}

Consumers, moreover, do not view choosing a particular long-distance provider as a critical issue in selecting among providers of wireless services. Wireless customers are less concerned with receiving the service of a particular IXC than they are with, among other things, the "lowest overall monthly charges possible."^{6/} Because wireless carriers are able to offer lower prices via volume discounts with particular long-distance providers and can offer toll-free wide-area services which are not subject to hand-off at an artificial boundary, consumers are benefitted by lower prices when there is no equal access obligation.^{7/} As Airtouch concludes, carriers will make market-driven decisions to offer access to any long-distance provider desired by customers; therefore, ". . . government-defined methods of achieving equal access are wholly unnecessary in the dynamic CMRS marketplace."^{8/}

Several commenters argued that equal access obligations are not necessary because the wireless communications market is

^{5/} Comments of Airtouch at p. 17; see also Comments of Century Cellunet at p. 5; Comments of GTE at p. 9; Comments of RAM at p. 3.

^{6/} See, e.g., Comments of Airtouch at p. 4. Airtouch concluded from a survey of its customers that wireless users typically want low prices, wide-area coverage, a single bill, and quality connections. Id.

^{7/} Coupled with the increased cost of implementing equal access obligations, the loss of volume discounts and the inability to provide toll-free wide-area service will have a significant impact on the end-user's cost of wireless services.

^{8/} Id. at p. 5.

competitive.^{9/} This is incorrect. The Commission itself has recently found that the cellular carriers have market power and that the CMRS marketplace is not fully competitive at this time.^{10/} Moreover, it is not the presence or absence of market competition that is determinative of the need for equal access. Rather, it is the presence or absence of bottleneck access to long distance services that determines whether providers should be subject to equal access obligations. Although the bottleneck remains for most wireline subscribers, there is no comparable CMRS bottleneck. CMRS consumers have the ability to reach long-distance providers through a number of carriers. Thus, despite the continuing market power of the cellular carriers, in contrast to ESMR, SMR and PCS providers, consumers have a *choice* of wireless providers thereby rendering mandated equal access requirements unnecessary and not sustainable on a cost/benefit basis.

LDDS argues that, even in a competitive market, the Commission must impose equal access obligations. Again, this argument misses the point. In a market with several competitors -- whether or not fully competitive -- mandated equal access is not necessary to

^{9/} See Comments of Airtouch at p. 5; Comments of American Personal Communications ("APC") at p. 2; Comments of the Cellular Telecommunications Industry Association ("CTIA") at p. 5; Comments of Century Cellunet, Inc. ("Century") at p. 13; Comments of Columbia PCS, Inc. ("Columbia PCS"); Comments of Dakota Cellular at p. 2; Comments of New Par at pp. 2-5.

^{10/} See Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) (the "Second Report and Order") at paras. 138, 138. See also LDDS Communications, Inc. ("LDDS") at p. 4 (the wireless communications market is not competitive).

ensure that wireless users can choose their preferred IXC. With several providers in the market, consumers can choose the wireless carrier offering the service of its preferred IXC. Wireless carriers, seeking to compete in the market, will provide access to those IXCs sought after by wireless users because failure to do so may result in a loss of customers. Thus, in a market with several providers, the market will assure that the objectives of equal access are realized without the costs, delays and burdens of unnecessary regulation.

B. Interim Equal Access Obligations Are Unnecessary, Economically Inefficient And A Waste Of Resources

Some parties argued that the Commission should impose equal access obligations on a temporary basis -- until the obligations of the Modified Final Judgement ("MFJ")^{11/} are lifted from the BOC-affiliated cellular companies.^{12/} *In essence, these commenters expressly agree with Nextel and others that mandated equal access is unnecessary and does not benefit the public.*^{13/} They nonetheless argue that all CMRS must be subject to equal access for no other reason than the fact that BOC-affiliated cellular companies are so bound.

^{11/} United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982) *aff'd sub nom Maryland v. U.S.*, 460 U.S. 1001 (1983) ("MFJ").

^{12/} See Comments of NYNEX at p. 3; Comments of Southwestern Bell at 47.

^{13/} See e.g., Comments of NYNEX at pp. 3, 7 (equal access does not produce significant benefits); Comments of Southwestern Bell at pp. 20-24 (equal access is not applicable to the wireless industry). Comments of Bell Atlantic at p. 4.

First, regulatory parity does not require identical regulations of all CMRS providers -- particularly regulations which produce few, if any, public benefits. For example, Florida Cellular Limited Partnership ("Florida Cellular") admits that equal access obligations will result in higher prices for its customers. Yet, Florida Cellular asks that the Commission impose the obligations, and thereby spread these inefficiencies, on all CMRS if it is imposed on any CMRS.^{14/} This approach would elevate superficial notions of parity above the overriding interest of consumers in receiving competitive CMRS services at the lowest prices. This is not only inconsistent with the Commission's objectives in designing the CMRS regulatory structure, but it is simply nonsensical.^{15/} As Vanguard Cellular Systems, Inc. ("Vanguard") stated in its Comments, notions of regulatory parity do not justify higher prices.^{16/} The mere fact that BOC-affiliated cellular providers have a judicially mandated obligation, which arose out of the BOC affiliates' history of monopoly power in the landline industry, does not justify the imposition of those obligations on other CMRS providers.

^{14/} See Comments of Columbia PCS at p. 2 (regulatory parity does not require the Commission to "clone" its regulations on all CMRS); see also Rural Cellular Association at pp. 5-6.

^{15/} Second Report and Order, *supra*. See also the Third Report and Order in GN Docket No. 93-252, FCC 94-212, released September 23, 1994, at para. 1 (adopting rules for the mobile services intended to enhance competition, promote the development of new and technologically innovative service offerings, and ensure that consumer demand, not regulatory decree, dictates the course of the mobile services marketplace).

^{16/} Comments of Vanguard at p. 18.

Second, commenters supporting interim equal access obligations advocate imposing expensive, time-consuming and utterly unnecessary obligations on CMRS providers -- most of whom are new entrants struggling to achieve a market presence. Nextel, for example, would be forced to shift its resources to invest hundreds of thousands of dollars in developing and retrofitting its systems, and hiring extra employees to administer the equal access obligations.^{17/} Then, in two or three years -- just about the time Nextel has completed the conversion -- the obligations would be lifted because they are unnecessary. This would be sheer economic waste -- significant investment that could have been made in a more positive and useful manner to implement nationwide digital coverage spent instead on interim equal access, systems and upgrades. The achievement of a competitive CMRS market will not be advanced by imposing onerous obligations on entrants.^{18/}

C. At A Minimum, The Commission Should Phase In Equal Access Regulations

Notwithstanding the above, if the Commission nonetheless imposes equal access obligations on all CMRS, the obligation should

^{17/} See Comments of CTIA at pp. 11-12 and Comments of Cox Enterprises at p. 14. Both commenters argue that mandated equal access will force companies to shift resources to areas where the resources are not needed, thereby shifting them away from more productive areas of the company.

^{18/} See Comments of Airtouch at p. 9 ("the answer is not to spread the inefficiencies, but to advocate their repeal."). Even NYNEX, a proponent of the interim equal access obligation, argues that the "solution is not to require equal access for all; [the] solution is to get rid of it in the MFJ."). Comments of NYNEX at p. 7.

be phased in.^{19/} Moreover, several parties argued that the obligation should not be as onerous as that imposed on wireline carriers. As RAM argues, mandated equal access will require significant changes to its systems, requiring significant time and resources to fulfill the equal access obligation.^{20/}

Western Wireless and McCaw argue that new entrants such as Nextel should be required to implement equal access sooner than existing providers,^{21/} while MCI claims that ESMR and PCS should be ready to provide equal access immediately upon initiation of service. These commenters ignore the fact that Nextel is already operating systems in California and is nearing commercial operations in several other markets. Nextel's system has been developed and implemented using the European GSM standard, which is not equipped for providing equal access.^{22/} Adding equal access

^{19/} As discussed in Nextel's Comments, for reclassified providers that will continue to be regulated as private carriers until August 10, 1996, the Commission should phase in any equal access requirements beginning on that date. Comments of Nextel at p. 13. See also Comments of National Telephone Cooperative Association ("NTCA") at p. 6; Comments of NYNEX at p. 8; Comments of PCIA at p. 9; Comments of Point Communications Company ("Point Communications") at p. 4; Comments of Western Wireless Corporation ("Western Wireless") at p. 6; Comments of AT&T at p. 10.

^{20/} See Comments of RAM at p. 3. RAM claims that it will have to make the following system changes to comply with equal access obligations: \$13 million in hardware upgrades, \$4.7 million in software upgrades, \$6.4 million in miscellaneous changes, and \$5 million in annual operating costs.

^{21/} Comments of Western Wireless at p. 6; Comments of McCaw at p. 29.

^{22/} See Comments of DCR Communications, Inc. ("DCR") at p. 10 (DCR recognizes that changing the European GSM standard equipment will take time); Comments of Dial Page at p. 4.

capabilities to its switches will not be available for commercial implementation until sometime in 1996 at a cost of millions of dollars. After that, retrofitting existing systems and implementing these changes will take several years.^{23/} Because Nextel's new digital technology was developed without equal access, and is already in place in a number of markets, Nextel is not in a position to more expeditiously provide equal access than existing providers. Such suggestions ignore Congress' express objectives in the statutorily-mandated transition period.^{24/} Nextel reiterates that it will require at least two years after August 10, 1996 to implement any equal access obligation imposed by the Commission.^{25/}

III. INTERCONNECTION

A. The Commission Must Ensure That LECs Provide All CMRS Carriers Nondiscriminatory Interconnection

A number of commenters opposed the Commission's proposal to tariff interconnection between LECs and CMRS providers, stating

^{23/} The Motorola Integrated Radio System ("MIRS"), the technology with which Nextel provides its ESMR services, is not equipped for roaming capabilities. Thus, the MIRS system will also have to be upgraded. See Comments of OneComm at p. 15.

^{24/} Coupled with the other system changes resulting from Nextel's reclassification as a CMRS provider, New Par's and MCI's claims that the changes can be made within six or twelve months are nonsensical. Neither of these commenters would allow sufficient time for Nextel to begin providing equal access to its customers while also attempting to make the changes necessary to adjust to common carrier regulation.

^{25/} August 10, 1996 is the end of the transition period provided for reclassified CMRS providers in the Omnibus Budget Reconciliation Act of 1993. See Section 6002(c)(2)(B) of the Budget Act.

that tariffing imposes unnecessary costs and delay and prevents carriers from negotiating interconnection arrangements tailored to individualized needs.^{26/} It is noteworthy, however, that most of these commenters are LECs and existing cellular providers that have negotiated favorable interconnection agreements over the past ten years. Incumbent cellular carriers could obtain competitive advantage by hindering the ability of new entrants to automatically obtain comparable terms and conditions through wireless interconnection tariffs. Similarly, it appears that some of the LECs would prefer not to disclose the terms and conditions of existing cellular agreements to new entrants. The Commission should consider whether these objections to interconnection tariffs are really directed at avoiding the disclosure of terms and conditions and hiding discriminatory practices.

Nextel suggested in its opening comments that interconnection tariffs may be the most efficacious means of ensuring that all CMRS providers receive the same rates, terms and conditions as all other similarly situated CMRS providers.^{27/} As an alternative, it suggested that the Commission modify its good faith negotiating requirement to require that all interconnection agreements contain a "most favored nation" clause and be filed with the Commission.^{28/} This approach could achieve the benefits of

^{26/} See e.g., Comments of Airtouch at p. 21; Comments of McCaw at 23; Comments of NYNEX at p. 11.

^{27/} Comments of Nextel at p. 16.

^{28/} Id. at p. 17.

tariffing, without the associated inflexibility and administrative costs, provided that LECs do not use the negotiating process to competitively advantage their wireless affiliates by delaying in offering new CMRS entrants non-discriminatory terms and conditions. The opposition expressed by some commenters to mandatory "most favored nation" clauses, and even to filing interconnection agreements with the Commission, indicates the need for vigilant Commission oversight of the efficacy of interconnection by negotiated agreement.

Based on the record developed in this proceeding, as well as its experience in obtaining interconnection in a number of markets, Nextel submits that the critical issue is not whether interconnection is accomplished by tariff or negotiation. Either approach can be effective, either can be abused, and Nextel has had both good and bad experiences with each.^{29/} The essential point is that the Commission must enforce the requirements of Sections 201 and 202 of the Act to assure that every CMRS provider has access to the most favorable terms and conditions provided by the LEC to any other similarly situated CMRS provider for comparable

^{29/} As an example, in the NYNEX region, New York Telephone Company readily amended its cellular interconnection tariff to make Nextel eligible for the same interconnection arrangements available to cellular carriers. In sharp contrast, Nextel has been discussing interconnection with New England Telephone Company ("NET") for nearly six months and has made virtually no progress toward a satisfactory negotiated interconnection agreement in any of the five states NET serves.

interconnection services.^{30/} Regardless of the mechanism, the Commission must assure that interconnection arrangements reasonably responsive to individualized needs are available to all CMRS providers without undue delay on a non-discriminatory basis.^{31/}

The comments also indicate that the Commission must reemphasize the principle of mutual compensation in LEC/CMRS interconnection. The LECs are generally continuing to resist mutual compensation arrangements for terminating landline-originating calls on wireless systems. The Commission should state in this proceeding that mutual compensation for interstate and intrastate traffic must be an element of all LEC/CMRS interconnection arrangements.

B. The Comments Overwhelming Oppose Mandated CMRS-To-CMRS Interconnection

The commenters almost unanimously opposed any form of mandated CMRS-to-CMRS interconnection.^{32/} Because the CMRS industry is

^{30/} Accordingly, if the Commission continues to endorse negotiated interconnection agreements, they should be required to include a most favored nation clause. They should also be filed with the Commission and available for public inspection.

^{31/} In the Second Report and Order, the Commission adopted non-discriminatory interconnection policies to assure that "competing mobile services providers all will have a fair opportunity to obtain access to the public switched network. These even-handed interconnection policies will promote competition, job creation and economic growth." See Second Report and Order at para. 20.

^{32/} See Comments of Airtouch at p. 22; Comments of Alltel of p. 8; Comments of Ameritech at p. 4; Comments of AMTA at p. 14; Comments of AT&T at p. 13; Comments of Bell Atlantic at p. 15; Comments of BellSouth at p. 11; Comments of CTIA at p. 25; Comments of GTE at p. 46; Comments of McCaw at p. 5; Comments of New Par at p. 22; Comments of NYNEX at p. 13; Comments of OneComm at p. 21; Comments of Organization for the Protection and Advancement of

a dynamic new market, it is premature to impose mandatory interconnection obligations among CMRS providers. All CMRS subscribers can interconnect with users of any other network through the public switched telephone network ("PSTN"). Should the time come where a direct interconnection with another CMRS provider is economically feasible or necessary, CMRS carriers that can interconnect will do so. However, at this time, there is no evidence that such interconnections will be necessary or desirable. Moreover, mandating standards for CMRS to CMRS interconnection could unnecessarily freeze the development of new technology. Thus, the Commission should allow the CMRS market to develop without this unnecessary obligation.

PCIA suggests that the Commission establish certain guidelines to govern any potential CMRS-to-CMRS interconnection.^{33/} This is premature in light of the industry's infancy. Because no one can be sure how the market will develop, who the participants will be, how interrelated the services will be, and in what context CMRS-to-CMRS interconnection might arise, the Commission cannot accurately or effectively establish interconnection guidelines at this time.^{34/}

Small Telephone Companies ("OPASTCO") at p. 5; Comments of PCIA at p. 15; Comments of Rochester Telephone Corp. at p. 10; Comments of Rural Cellular Association at p. 9; Comments of SNET Mobility at p. 13; Comments of Southwestern Bell at p. 66.

^{33/} Comments of PCIA at pp. 17-18.

^{34/} For example, some CMRS providers may offer voice services, other only data, while still others interactive video communications. Direct interconnection of these services would be unnecessary in most circumstances and likely unnecessary.

IV. RESALE

A. Mandatory Resale Is Not Necessary In The CMRS Market Since There Will Be Numerous Participants

Resale obligations are unnecessary in a potentially competitive market like the CMRS industry. Those supporting the imposition of mandated resale generally include those companies currently subject to the regulation.^{35/} Again, they argue that the Budget Act's regulatory parity mandate requires the imposition of resale on all CMRS.

Their argument, however, does not consider whether mandated resale obligations would be in the public interest. In a potentially competitive market with several providers, mandated resale is not necessary. Conversely, mandated resale could likely have inequitable results as some CMRS providers would avoid the significant investment in CMRS facilities and simply use the facilities of a competitor who has invested the requisite time, money and effort to build a system. Because CMRS are not bottleneck facilities and the CMRS market will have several competitors, there is no justification for imposing resale on all CMRS. In a competitive CMRS market, a provider will permit resale if such resale proves to be economical. Thus, the Commission should allow the market to dictate the resale of CMRS services.

^{35/} See Comments of BellSouth at p. 23; Comments of McCaw at p. 21; Comments of Bell Atlantic at p. 17; Comments of CTIA at p. 34; Comments of SNET Mobility at p. 15.

V. CONCLUSION

There is no basis upon which to impose equal access obligations on CMRS providers. Because the CMRS market has no bottleneck provider, end-users can access their preferred long-distance provider without equal access obligations. The costs of converting to an equal access system and then operating that system are not justified by the minimal benefits that may result from the imposition these obligations.

As to LEC/CMRS interconnection, Nextel urges the Commission to re-emphasize the principle of mutual compensation and to take whatever actions are necessary to assure that CMRS carriers are able to obtain non-discriminatory interconnection with LECs without undue delay.

Finally, the CMRS market, although not yet competitive, does have numerous providers. In such a potentially competitive marketplace, mandatory resale obligations and CMRS-to-CMRS

(continued on next page)

interconnection are not necessary and could potentially distort the competitiveness of the CMRS market.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ladonya D. Miller, hereby certify that on this 13th day of October 1994, I caused a copy of the attached Reply Comments of Nextel Communications, Inc., to be served by hand delivery or first-class mail, postage prepaid to the following:

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